

EVALUATION:

a. Environmental Assessment (EA): An abbreviated EA for maintenance dredging of the Industrial Canal will be prepared and coordinated with appropriate agencies.

b. Environmental Impact Statement (EIS): The proposed activity will not have significant impacts on the quality of the human environment and an Environmental Impact Statement, pursuant to the National Environmental Policy Act (NEPA), will not be required.

c. Threatened or Endangered Species: Consultation with the National Marine Fisheries Service and the U.S. Fish and Wildlife Service pursuant to Section 7 of the Endangered Species Act will be conducted. The West Indian manatee is known to dwell in Lake Okeechobee, however they do not normally forage in the Industrial Canal.

d. Historical Resources: This notice initiates consultation with the State Historic Preservation Officer regarding potential historic resources in the region. Any unusual items as observed by Corps personnel or by the Contractor to have historical or archeological value shall be reported as soon as practicable.

e. Essential Fish Habitat: This notice initiates the Essential Fish Habitat (EFH) consultation requirements of the Magnuson-Stevens Fishery Conservation and Management Act. Our initial determination is that the proposed action will not have an impact on EFH or Federally managed fisheries in the region.

DISSEMINATION OF NOTICE: You are requested to communicate the information contained in this notice to any other parties whom you deem likely to have an interest in this matter.

COORDINATION: This notice is being sent to the following agencies:

FEDERAL AGENCIES:

FEDERAL HIGHWAY ADMINISTRATION
U.S. COAST GUARD
U.S. FISH & WILDLIFE SERVICE
ATLANTIC MARINE CENTER
NATIONAL MARINE FISHERIES SERVICE
NATIONAL PARK SERVICE
U.S. GEOLOGICAL SURVEY

FEDERAL ENERGY REGULATIONS
U.S. ENVIRONMENTAL PROTECTION AGENCY
NATIONAL OCEANOGRAPHIC AND ATMOSPHERIC ADMINISTRATION
FEDERAL MARITIME COMMISSION
U.S. DEPARTMENT OF AGRICULTURE

STATE AGENCIES:

DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF SOLID WASTE MANAGEMENT
FLORIDA INLAND NAVIGATION DISTRICT
FLORIDA GAME & FRESH WATER FISH COMMISSION
DIVISION OF ARCHIVES, HISTORY & RECORDS
STATE HISTORIC PRESERVATION OFFICE
FLORIDA DEPARTMENT OF TRANSPORTATION
SOIL CONSERVATION SERVICE
PLANNING MANAGER BUREAU OF SUBMERGED LANDS DEPARTMENT
BUREAU OF SOIL AND WATER CONSERVATION
FLORIDA OFFICE OF ENTOMOLOGY
ST. JOHN'S RIVER WATER MANAGEMENT DISTRICT
FLORIDA STATE CLEARINGHOUSE
FLORIDA MARINE PATROL
BUREAU OF STATE PLANNING
FLORIDA DIVISION OF RECREATION
NORTHEAST FLORIDA REGIONAL PLANNING COUNCIL
HABITAT CONSERVATION SERVICE
FLORIDA STATE CONSERVATION SERVICE
SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT

ENVIRONMENTAL ORGANIZATIONS:

FLORIDA AUDUBON SOCIETY
FLORIDA WILDLIFE FEDERATION
SIERRA CLUB
FLORIDA DEFENDERS OF THE ENVIRONMENT
NATIONAL ESTUARY PROGRAM

LOCAL GOVERNMENTS:

PONCE DE LEON PORT AUTHORITY
COUNTY MANAGER, VOLUSIA COUNTY

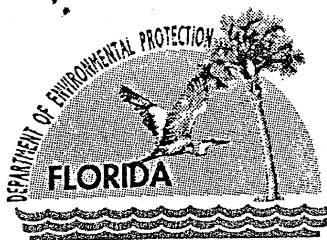
FOR THE COMMANDER:

Encl

Gordon M. Butler, Jr.
Chief, Construction-Operations
Division

CESAJ-CO-OM/Brodehl
CESAJ-CO-OM/Beasley
CESAJ-CO-O/Adams
CESAJ-PD-E/Smith
CESAJ-CO/Schwartz
CESAJ-CO/Butler

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Jeb Bush
Governor

Department of Environmental Protection

Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

David B. Struhs
Secretary

TO: ~~BRAD~~ CLY
TIPHANIE
FYI

May 15, 2001

Richard Bonner, P.E.
Deputy District Engineer
U.S. Army Corps of Engineers
400 W. Bay Street
Jacksonville, Florida 32232

Subject: NOTICE OF EXEMPTION
Project: Maintenance Dredging of the Industrial Canal, Hendry County
Exemption No. 183841

Dear Mr. Bonner:

This letter is to acknowledge receipt of your notice dated April 26, 2001, requesting a review of the proposed activities associated with the project referenced above. Specifically, the proposal is to dredge approximately 15, 000 cubic yards of material from the Industrial Canal (a manmade canal) and dispose of the material in an upland confined disposal area contiguous with the S-310 structure of Lake Okeechobee in Hendry County.

Department staff have reviewed your proposal and have determined that your project qualifies for an exemption, pursuant to Rule 40E-4.051(2)(a), Florida Administrative Code. Specifically, maintenance dredging projects in existing manmade canals with disposal of the dredged material in an upland confined disposal area, such as proposed in this project, are exempt from permitting under this rule.

CONDITIONS OF EXEMPTION

1. This determination is applicable pursuant only to the statutes in affect at the time of information submittal. Consequently, the determination may not be valid in the event subsequent changes occur in the applicable statutes.
2. Activities that qualify as exemptions are waived water quality certification under Public Law 92-500 (see Rule 62-343.070(9), F.A.C.), and have been found to be in concurrence with Florida's Coastal Zone Management Program, without further action by the Department,

provided the activity is performed according to all applicable rules of the Department and all general and specific conditions of the exemption.

3. Activities that qualify for this exemption must be conducted in a manner that does not cause or contribute to a water quality violation, under Chapter 62-302, Florida Administrative Code. To meet this requirement, the Department recommends using best management practices and the guidelines described in the latest revision of Chapter 6 of the Florida Land Development Manual; A Guide to Sound Land and Water Management.
4. This letter does not relieve you from the responsibility of obtaining other permits (federal, state, or local) which may be required for the activity.
5. The determination that your activity qualifies as an exempt activity may be revoked (1) if the installation is substantially modified, (2) if the basis for the exemption is determined to be materially incorrect, or (3) if the installation causes or contributes to violations of state water quality standards. Any changes made in the construction plans or location of activity may necessitate a permit from the Department. Therefore, you are advised to contact the Department before beginning the activity and any work in wetlands which is not specifically described in your submittal.

NOTICE OF RIGHTS OF SUBSTANTIALLY AFFECTED PERSONS

This letter acknowledges that the proposed activity is exempt from ERP permitting requirements under Rule 40E-4.051(2)(a), F.A.C. This determination is final and effective on the date filed with the Clerk of the Department unless a sufficient petition for an administrative hearing is timely filed under sections 120.569 and 120.57 of the Florida Statutes as provided below. If a sufficient petition for an administrative hearing is timely filed, this determination automatically becomes only proposed agency action subject to the result of the administrative review process. Therefore, on the filing of a timely and sufficient petition, this action will not be final and effective until further order of the Department. The procedures for petitioning for a hearing are set forth in the attached notice.

This determination is based on the information you provided the Department and the statutes and rules in effect when the application was submitted and is effective only for the specific activity proposed. This determination shall automatically expire if site conditions materially change or the governing statutes or rules are amended. In addition, any substantial modifications in your plans should be submitted to the Department for review, as changes may result in a permit being required. In any event, this determination shall expire after one year.

Be advised that your neighbors and other parties who may be substantially affected by the proposed activity allowed under this determination of exemption have a right to request an administrative hearing on the Department's decision that the proposed activity qualifies for this exemption. Because the administrative hearing process is designed to redetermine final agency

activities in the project area. During construction, the Standard Manatee Construction Conditions will be implemented.

Wood Stork (*Mycteria americana*, E)

Wood storks are regularly seen foraging around Lake Okeechobee, particularly along roadside and agricultural ditches. Even though the project area may be used by wood storks for foraging, the area is not suitable for nesting birds due to the lack of woody vegetation and the high level of human activity.

Construction activities will be kept under surveillance, management, and control to minimize interference with, disturbance of, or damage to wildlife resources. Prior to the commencement of construction, the contractor will instruct all personnel associated with the project that endangered species could be in the area, the need to avoid collision with them, and the civil and criminal penalties for harming, harassing or killing them.

Because of the nature of the work, and the precautions that will be taken to avoid adverse impacts, the Corps has determined that the proposed activities will have no effect on listed species and other fish and wildlife resources under your jurisdiction. We request your concurrence with our determination.

If you have any questions, please contact Ms. Yvonne Haberer at 904-232-1701.

Sincerely,

James C. Duck
Chief, Planning Division

Enclosure

bcc: CESAJ-CO-OM (Brodehl)

5/11/01

Haberer/CESAJ-PD-EG/1701

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Dupes/CESAJ-PD-EG

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